

Department of Justice

§ 63.4

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AUTHORITY: 5 U.S.C. 301, Executive Order No. 11988 of May 24, 1977, and Executive Order No. 11990 of May 24, 1977.

SOURCE: Order No. 902-80, 45 FR 50565, July 30, 1980, unless otherwise noted.

§ 63.1 Purpose.

These guidelines set forth procedures to be followed by the Department of Justice to implement Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). (The Orders.)

§ 63.2 Policy.

(a) It is the Department of Justice's policy to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in floodplains and wetlands whenever there is a practicable alternative. The Department will provide leadership and take affirmative action to carry out the Orders.

(b) It is the Department of Justice's intention to integrate these procedures with those required under statutes protecting the environment, such as the National Environmental Policy Act (NEPA). Whenever possible, the procedures detailed herein should be coordinated with other required documents, such as the environmental impact statement (EIS) or environmental assessment required under NEPA, so that unnecessary paperwork can be eliminated.

§ 63.3 References.

(a) Unified National Program for Floodplain Management, Water Resources Council, which is incorporated in these guidelines.

(b) Water Resources Council Floodplain Management Guidelines, Water Resources Council, 1978 (43 FR 6030).

(c) National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*)

and NFIP criteria (44 CFR part 59 *et seq.*).

(d) Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

(e) National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*) (NEPA).

§ 63.4 Definitions.

Throughout this part, the following basic definitions shall apply:

(a) *Action*—any Federal activity including:

(1) Acquiring, managing and disposing of Federal lands and facilities;

(2) Providing federally undertaken, financed, or assisted construction and improvements; and

(3) Conducting Federal activities and program affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) *Agency*— an executive department, a government corporation, or an independent establishment and includes the military departments.

(c) *Base flood*— that flood which has a one percent chance of occurrence in any given year (also known as a *100-year flood*). (This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.)

(d) *Base floodplain*— the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(e) *Channel*— a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(f) *Critical action*—any activity for which even a slight chance of flooding would be too great.

(g) *Facility*— any man-made or man-placed item other than a structure.

(h) *Flood or flooding*— a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the usual and rapid accumulation or runoff of surface waters from any source.

(i) *Flood fringe*— that portion of the floodplain outside of the regulatory

floodway (often referred to as “floodway fringe”).

(j) *Floodplain*— the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

(k) *Floodproofing*— the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

(l) *Minimize*— to reduce to the smallest possible amount or degree.

(m) *One percent chance flood*— the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(n) *Practicable*— capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(o) *Preserve*— to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(p) *Regulatory floodway*— the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the NFIP).

(q) *Restore*— to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(r) *Structures*— walled or roofed buildings, including mobile homes and gas

or liquid storage tanks that are primarily above ground (as set by the NFIP).

(s) *Wetlands*— “those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds” (as defined in Executive Order 11990 (Protection of Wetlands)).

§ 63.5 Responsibilities.

(a) The Assistant Attorney General, Land and Natural Resources Division,

(1) Has overall responsibility for ensuring that the Department’s responsibilities for complying with the Orders are carried out.

(2) Will ensure that the Water Resources Council, the Council on Environmental Quality, and the Federal Insurance Agency (FIA) are kept informed of the Department’s execution of the Orders, as necessary, and

(3) Will determine, and revise on a continuing basis, which components of the Department should take further steps, such as the promulgation of program specific procedures, to comply with the Orders. Considerations for making this selection are whether a component:

(i) Acquires, manages, and disposes of federal lands and facilities;

(ii) Provides federally undertaken, financed or assisted construction and improvements;

(iii) Conducts federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities;

(iv) Reviews and approves component procedures for complying with the Orders;

(b) The heads of offices, boards, bureaus and divisions,

(1) Are responsible for preparing program specific guidelines or procedures, where necessary, to comply with the